



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 7008

December 17, 2009

Mr. Jeff Lutz  
Fire Marshal  
Fire Prevention Bureau  
Anaheim Fire Department  
201 South Anaheim Boulevard, Suite 300  
Anaheim, California 92805

Dear Mr. Lutz:

The California Environmental Protection Agency (Cal/EPA), Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the City of Anaheim Fire Department Certified Unified Program Agency (CUPA) on November 17 and 18, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that the City of Anaheim Fire Department program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Ernie Genter every 90 days after the evaluation date; the first report is due on February 16, 2010.

Cal/EPA also noted during this evaluation that City of Anaheim Fire Department has worked to bring about a number of local program innovations, including an excellent outreach program and commendable inspection and enforcement programs. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original Signed by Don Johnson]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

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Anaheim, California 92805

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Ms. Jennifer Lorenzo  
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Mr. Mark Pear  
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Ms. Terry Brazell  
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Mr. Jeff Lutz  
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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

**CUPA: City of Anaheim Fire Department**

**Evaluation Date: November 17 and 18, 2009**

### **EVALUATION TEAM**

**Cal/EPA:** Ernie Genter  
**SWRCB:** Sean Farrow  
**DTSC:** Mark Pear  
**OSFM:** Jennifer Lorenzo

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Ernie Genter at (916) 327-9560.

|   | <b><u>Deficiency</u></b>  | <b><u>Preliminary Corrective<br/>Action</u></b>   |
|---|---|---|
| 1 | <p>The CUPA is under-reporting enforcement actions on Annual Enforcement Summary Report 4.</p> <p>It is clear that the CUPA is taking many informal enforcement actions, such as Notices to Comply and re-inspections for minor and Class II violations. However, these informal actions are not being reported as enforcement actions on Report 4. For example, the CUPA reported 387 facilities with Class II violations for hazardous materials release response plans, but only 78 enforcement actions were reported. However, 444 "other" inspections were reported. Many of these "other" inspections were follow-up inspections for violation compliance, which should be reported as informal actions. Furthermore, pursuant to Title 27, 15110(d)(2), any notification to a regulated business of non-compliance and establishment of an action and a date by which that non-compliance is to be corrected is an informal enforcement action.</p> <p>Title 27, Section 15290(a)(3) [Cal/EPA]</p> | <p>By February 16, 2010, the CUPA will adjust their electronic data system to track and accurately report all informal enforcement actions.</p> <p>By September 30, 2010, the CUPA's will include all informal and formal enforcement actions taken during the reporting period on their FY 09/10 Report 4.</p> |

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

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| <p style="text-align: center;"><b>2</b></p> | <p>The CUPA has not completed issuing all the CUPA Consolidated Permits to its regulated facilities.</p> <p>A review of the facility records indicates that many of the permits for this fiscal year have not been issued, due to an 11-month backlog in data entry.</p> <p><b>HSC, Chapter 6.7, Section 25284 (a)(1) (SWRCB)</b><br/><b>HSC, Chapter 6.11, Section 25404.2 (a) (Cal/EPA)</b></p>  | <p>Immediately, the CUPA will identify the compliant facilities with expired permits that are eligible to be issued current permits. The CUPA will process these with the highest priority.</p> <p>By February 16, 2010, the CUPA will report the number of permits issued to date and provide a brief summary of the status of their corrective action.</p>   |
| <p style="text-align: center;"><b>3</b></p> | <p>The CUPA is not providing the hazardous materials business plan (HMBP) data to emergency responders within 15 days of receipt and confirmation.</p> <p>The CUPA utilizes its database (Tidemark Advantage) as a means to provide real-time access by its emergency responders within the City of Anaheim. However, due to the extended vacancy of the CUPA's administrative support staff position for data entry, a significant backlog now exists. Many records have not been entered in the database and the chemical inventories are now outdated or obsolete. According to the CUPA and as confirmed by review of facility records, approximately 500 facility records are about 11 months behind in data entry.</p> <p><b>HSC, Chapter 6.95, Section 25509.2 (a)(3) [Cal EMA &amp; OSFM]</b></p>  | <p>Immediately, the CUPA will identify facilities with obsolete hazardous materials inventory data and process those with the highest priority.</p> <p>By February 16, 2010, the CUPA will provide a summary of these activities.</p> <p>By May 1, 2010, the CUPA will have the most recent HMBP data entered into its Tidemark Advantage database for the next year's permitting cycle. The CUPA will maintain processing of HMBP updates within the 15 day requirement.</p>  |
| <p style="text-align: center;"><b>4</b></p> | <p>The CUPA is not fully implementing its fee accountability program, which is impacting the CUPA's ability to adequately administer the Unified Program (UP) in the City of Anaheim.</p> <p>A combination of events and actions are collectively the cause of this situation. The CUPA's operations are deficient in the following areas:</p> <ol style="list-style-type: none"> <li>1. Single fees collected and earmarked solely for UP-related activities are being inappropriately used to fund personnel services and other related expenses for work activities and tasks associated with non-UP activities. Using the UP fee revenues to fund work activities that are not part of the scope of the UP is not allowed by statute. Pursuant to state law, the UP single fee revenues are required to be used for the sole purpose of funding the necessary</li> </ol> | <p>Immediately, the CUPA Program will be reimbursed for all inappropriate use of CUPA funds. By February 16, 2010, the CUPA will report to Cal/EPA the scope and status of these reimbursements. The CUPA will also include in the report, sufficient fiscal documentation to demonstrate the completion of such reimbursements to the CUPA fund.</p> <p>By February 16, 2010, the CUPA will report to Cal/EPA the status of their efforts fully manage and control UP staff resources by either ensuring UP staff are allocated solely to perform UP activities or by adjusting the funding source to reflect the allocation of these staff to other non-UP activities.</p> |

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|  | <p>and reasonable costs incurred by the CUPA in their administration of the UP in the City of Anaheim. The following situations support this finding:</p> <ul style="list-style-type: none"> <li>• A CUPA inspector has been assigned fire investigation duties, received investigation training, and is expected to perform investigation activities when called upon while remaining fully funded through the CUPA's single fee revenues.</li> <li>• Cal/EPA has discovered that two support positions, which are part of the CUPA's UP organization, have been reallocated to perform support activities for other fire department units while remaining fully funded through the CUPA's single fee revenues.</li> </ul> <p>2. Some positions that are funded by and allocated to the UP do not fully support the UP, impacting the CUPA's administration of the UP in the City of Anaheim. Reassignment of staff, as depicted above, has left the CUPA with insufficient resources to perform activities necessary to effectively and efficiently administer the UP. Specific program areas impacted include the reduction of:</p> <ul style="list-style-type: none"> <li>• Critical support staff resources that has resulted in an 11-month backlog in entering data into the CUPA's data system. This backlog is directly impacting the timely issuance of facility permits, forcing numerous businesses to operate with expired permits, delaying the assessment and collection of the single fees from regulated businesses, providing accurate and timely program performance reports to the State and ensuring critical hazardous materials information is accurate and immediately available to emergency response personnel;</li> <li>• Technical staff resources due to their</li> </ul> | <p>By February 16, 2010, the CUPA will develop and implement a plan to adequately account for all UP revenues, including the establishment of a "Special Fund" to manage, at a minimum, penalties collected from UP related enforcement actions.</p> <p>As recommended three years ago in the Anaheim CUPA's 2006 Evaluation Report, Cal/EPA again strongly advises the CUPA to change their financial management practices by incorporating UP single fees revenues into the "Special Fund" that will be established for UP related penalty revenues. The establishment of this Special Fund for UP revenues will result in a more efficient and cost-effective operation of the UP in the City of Anaheim.</p> |
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Certified Unified Program Agency (CUPA)  
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|  | <p>reallocation to fire investigative tasks. This reduction of UP staff availability has resulted in a decrease in productivity, such as the identification of new qualified businesses, open plan check activities and the overall district management duties assigned to Technical staff.</p> <p>3. The UP single fees collected from regulated businesses and the penalties collected as a result of enforcement actions initiated by the CUPA are not fully accounted for to the CUPA Manager. These revenues are deposited and maintained in the City General Fund and not a Special Fund. Therefore, the CUPA Manager is unable to provide complete fee accountability for the UP revenues and expenditures, as mandated by state law. The CUPA has not established a "Special Fund" for penalties collected as a result of enforcement actions, which are required by state law to be deposited and used exclusively to cover the CUPA's cost of enforcing the UP. The following reasons are provided to support the CUPA's establishment of a "Special Fund" to account and management UP revenues:</p> <ul style="list-style-type: none"> <li>• Co-mingling of the UP "special fund" revenues with the General Fund significantly increases the risk of misallocation of the UP funds.</li> <li>• Financial management provisions in both the City's budget and Municipal Code concerning the management of General Fund revenues and expenditures are more flexible than provisions that govern the management "Special Funds."</li> </ul> <p><b>HSC, Chapter 6.11, Sections 25404.1.1(i) and 25404.5(c)<br/>CCR, Title 27, Section 15210 (b) [Cal/EPA]</b></p> |  |
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Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**CUPA Representative**

John White  
(Print Name)

Original Signed  
(Signature)

**Evaluation Team Leader**

Ernest S. Genter  
(Print Name)

Original Signed  
(Signature)

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.*

1. **Observation:** The Inspection & Enforcement Plan identifies all available enforcement actions available to and utilized by the CUPA within CUPA authority. However, it does not clearly define informal and formal actions. The I&E Plan also does not clearly describe how, when, and where the different enforcement actions and the graduated series of enforcement actions may be utilized. Also, the CUPA, being a fire agency, does utilize some enforcement options available to them through the Fire Code for enforcement of CUPA violations.

**Recommendation:** Cal/EPA recommends that the CUPA amend their I&E Plan to: better define informal and formal enforcement actions; include all available enforcement options (including Fire Code options); and, more clearly describe how, when and where the various enforcement options are utilized. These amendments will help in consistency between staff, training of new staff, and accurately completing Report 4. Even though the CUPA is not utilizing the UST Red Tags enforcement option, it should be included in the I&E Plan in a way similar to how AEO process is not utilized and discussed. The CUPA may wish to refer to the 2008 Guidance Document for Inspection and Enforcement in addressing these items.

2. **Observation:** The CUPA has entered into agreement (Joint Powers Agreement) with other cities of Orange County and Orange County Fire Authority to create the Orange County-City Hazardous Materials Emergency Response Authority (OCCHMERA). The purpose is to provide prompt and efficient response to hazardous materials emergencies throughout Orange County region using hazardous materials response teams from these jurisdictions.

**Recommendation:** None.

3. **Observation:** The CUPA's I & E Plan does not mention the need of ICC certification for its UST inspectors.

**Recommendation:** The SWRCB recommends that the CUPA add these requirements to section C (Inspector Training Documentation) of its I & E Plan.

4. **Observation:** The CUPA's UST Inspection form does not identify "Significant Operational Compliance" items or provide for a summary of these items for tracking purposes during the annual compliance inspection.

**Recommendation:** The SWRCB recommends that the CUPA provide a means for determining SOC compliance during the inspection.

5. **Observation:** The CUPA inspectors have access to routinely use a digital camera to document violations at regulated facilities.

**Recommendation:** Photographs are useful to document violations and the conditions at facilities. Photographs could help strengthen your case should enforcement become necessary. Always remember to date stamp photographs.

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- 6. Observation:** The CUPA was able to demonstrate that some of the complaints which were referred by DTSC from November 2, 2006, to November 2, 2009, were investigated and/or referred. Follow-up documentation could be found for Complaints Nos. 08-0908-0680, 08-0608-0471, 08-0408-0308, and 08-0508-0335.

**Recommendation:** DTSC recommends tracking of complaints be improved. Please follow up with your goal in utilizing Tidemark in tracking the outcome of all complaint investigations. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by “note to file” and placed in the facility file or database, and email disposition to DTSC.

- 7. Observation:** The CUPA is conducting inspections with a frequency that is consistent with its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA has inspected all hazardous waste generators that have been identified by the CUPA. The CUPA has inspected all known facilities generating hazardous waste over the past three fiscal years. However, a discrepancy exists between the CUPA and DTSC data base systems. The last three annual inspection summary reports indicate the following:

- 1) 903 hazardous waste generators were identified in Fiscal Year 08/09 of which 412 were inspected.
- 2) 897 hazardous waste generators were identified in Fiscal Year 07/08 of which 492 were inspected.
- 3) 885 hazardous waste generators were identified in Fiscal Year 06/07 of which 416 were inspected.

**Recommendation:** DTSC recommends that the CUPA consult DTSC’s Hazardous Waste Tracking System to account for 1179 hazardous waste generators within the City of Anaheim.

- 8. Observation:** During the hazardous waste oversight inspection, the CUPA inspector was unaware of the adjacent qualifying business.

**Recommendation:** DTSC recommends looking for new businesses by checking surrounding properties to determine whether they should be regulated by the CUPA.

- 8. Observation:** The CUPA’s Staff Analyst maintains excellent revenue and expenditure records and documentation to clearly reflect the financial status of the CUPA on a quarterly basis.

**Recommendation:** None

## **EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA has an excellent outreach program. The CUPA has a detailed hazardous materials/waste section on the internet with various information for the general public and regulated community: single fee schedule, municipal code, brochures, Hazardous Waste Workbook, permit application, Unified Program Consolidated Forms (UPCF's) (which link to Cal/EPA's forms), templates for Consolidated Contingency Plan and Site Maps, Hazardous Materials Business Plan (HMBP) certification statement (which serves as both annual chemical inventory certification and triennial certification of the entire HMBP), various underground storage tank (UST) forms, and release reporting forms for UST & California Accidental Release Prevention (CalARP). Also, guidelines and procedures are available for following: hazardous substances facility closure guidelines and various UST guidance documents such as abandonment in place, installation and/or modification, UST removal, temporary closure, secondary containment testing and spill containment testing. Links to pertinent sites are also provided. Enhanced Vapor Recovery (EVR) information and Air Resources Board and the local Air Quality Management District requirements are also posted. A complaint link is provided, along with an email address for messages or documents to be directly submitted to the CUPA.

The City of Anaheim has a "small hydrocarbon pick-up program." The purpose of the Small Hydrocarbon Acquisition and Recovery Program (SHARP) is to provide an efficient and effective means of managing and handling certain wastes on public property generated by spills, abandonments and traffic accidents. The program allows small amounts of automotive fluids and paint-related wastes to be removed from public property, transported to a point of consolidation and disposed of properly. Identified responsible parties are billed for cost recovery in accordance with the current Fee Resolution. The program is coordinated by the CUPA.

The CUPA is proactive in maintaining a regular communication with its regulated community. The CUPA issues postcards to the businesses as reminders, which include several important due dates such as HMBP submittals, permit applications, single fees, and Permit-By-Rule notifications. The CUPA began offering Business Assistance Workshops in July 2008. It is a free workshop offered to the public and regulated community during the first Wednesday of every month from 1:00 P.M. to 7:00 P.M. The program provides personal assistance on the Unified Program, including: how and when to complete forms; CUPA consolidated permits and fees; CUPA consolidated permits verses fire code permits; resolution of compliance issues; and, what to do when changes occur within your business operations. In coordination with the Orange County Health Care Agency CUPA, the CUPA provided an Aboveground Petroleum Storage Act training. The training was videotaped and uploaded on the CUPA's Web site for free viewing by the general public and regulated community.

Every summer and winter, the City of Anaheim Public Works publishes a pamphlet called "Recycle Anaheim" for its residences. Issues on universal waste and household hazardous wastes are generally covered. The CUPA makes these pamphlets available at their office and at the Business Assistance Workshops. The CUPA is sending out annual post cards reminding businesses to submit their business plan certification statements, adjustment to closure cost estimates, treatment notification facility page renewals, recyclable materials reports, remote waste consolidation site annual notification and CUPA consolidated permits.

## Certified Unified Program Agency (CUPA)

### Evaluation Summary of Findings

Additionally, the CUPA maintains a Business Advisory Group made up of various representatives of its regulated community, and CUPA staff. This group meets quarterly to discuss various issues regarding the Unified Program; including progress, activities, projects and planning.

2. The CUPA has a commendable inspection program. The CUPA has exceeded the state's mandated inspections for HMBP, hazardous waste generator, tiered permit, and CalARP programs and generally met the annual inspections of UST facilities. The CUPA is actively involved with other area UP agencies, including Orange County CUPA, in activities such as developing and coordinating their Inspection & Enforcement Plan Updates. During the HWG Oversight inspection, the CUPA inspector conducted a complete hazardous waste generator inspection. The inspector asked for consent, took photographs, and toured the entire site. Record keeping related to hazardous waste including manifests, contingency plan, training plan, and training records were reviewed. The inspector noted his findings and concluded the inspection with a close out of his summary of violations on site and addressed the operator's concerns. During the UST Oversight inspection, the CUPA inspector, conducted the UST site inspection in a thorough and professional manner. His attention to detail and knowledge of code and regulations resulted in an excellent inspection. The inspector seemed to have a good working relationship with both the facility owner and the technician performing the monitoring certification.
3. The CUPA has a commendable enforcement program. The CUPA maintains a strong relationship with its City Attorney and District Attorney's office and continues to initiate formal enforcements when necessary. Within the last three fiscal years, the CUPA has initiated the following: three civil referrals for UST program in fiscal year (FY) 2006/2007, a civil referral for one UST case and a criminal referral for a hazardous waste generator in FY 2007/2008, and a civil referral for one HMBP case and two referrals for hazardous waste generators in FY 2008/2009. In addition, the CUPA has referred the following HWG enforcement cases to the DA:
  - Settled an enforcement order with American Circuit Technology, Inc. for \$20,000 in criminal penalties. Defendant illegally disposed of hazardous waste to the sewer system.
  - Settled an enforcement order with PWS Motion Control, Inc for unlawfully abandoning paint and solvent containers in a municipal dumpster at 3375 East Miraloma Avenue in Anaheim, CA for \$4,414.75 in civil penalties.
  - Pending cases (enforcement confidentiality) against two facilities - one a laundry facility, the other a printing business - both alleged to have illegally disposed of hazardous wastes.
4. Other than the backlog of entering data, the CUPA is progressing nicely in their move to a paperless data management system. All forms, files, inspections and inspection reports are electronic files. They are able to track and report much information (including inspections, re-inspections, RTC, complete multi-year invoicing data, violations, violation classification, violation follow-up, violation correction – stays in queue until corrected, fees, etc). They have already implemented a good records retention program for the electronic system (5 years for paper and electronic), and good “obsolete” documentation in files (both paper and electronic). The CUPA is waiting on CERS for business reporting.